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In re application of

Edlein et al.

Serial No. 09/657,679

Filed: September 8, 2000

For: PRINTED ANTIFOG FILM

DECISION ON
PETITION

This is a decision on the PETITION UNDER 37 CFR 1.181 TO WITHDRAW THE FINALITY OF THE OFFICE ACTION, dated September 4, 2007.

On December 6, 2006, a non-final Office action was mailed to applicants. The Office action contained rejections of claims 1-106 under 35 USC 103. A reply to the Office action was filed on May 10, 2007. In the reply, no amendments to claims 1-106 were made, however claims 107-112 were added and claim 74 was canceled.

On August 10, 2007, a final Office action was mailed. Among the rejections was a new grounds of rejection of claims 107-112 under 35 USC 103. The examiner stated in the office action that the new grounds of rejection were necessitated by Applicant's amendments to the claims and the Office action was made final.

Petitioner has argued that the finality of the last Office action is improper. Petitioner argues that the new grounds of rejection were not necessitated by Applicant's amendments.

DECISION

Section 706.07(a) of the MPEP states:

706.07(a) Final Rejection, When Proper on Second Action

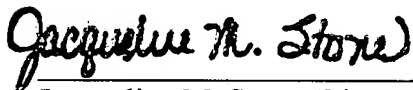
Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

Upon review of the prosecution history, the examiner's position is correct. On page 2 of the Final Office action of August 10, 2007, it is clearly stated that all of the rejections under 35 USC 103 in the previous office action of December 6, 2006 are repeated for the reasons of record.

Furthermore, the examiner goes on to present a new grounds of rejection in the Final Office action, rejecting the newly added claims of 107-112 under 35 USC 103. The examiner did not present any new grounds of rejection over any claim that was not previously presented. The only new grounds of rejection was for claims 107-112, which were newly added in the applicant's reply of May 10, 2007. Therefore, the applicant's amendments did indeed necessitate the new grounds of rejection of claims 107-112. Accordingly, the examiner properly made the August 10, 2007 Office action final.

The Petition is **DENIED**.

Applicant's time for response to the August 10, 2007 office action continues to run as set forth in the office action.



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